

KARILEE S. RAMALEY Senior Attorney Telephone: (602) 250-3626 Facsimile: (602) 250-3393

February 5, 2007

Mr. Daryl Francois
Office of Indian Energy and Economic Development
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Mr. Mark Whitenton
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue, NW
Washington, D.C. 20585

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1951 Constitution Avenue, NW
Washington, D.C. 20245

Submitted via e-mail to: IEED@bia.edu

Re: Section 1813 Comments

Dear Mssrs. François and Whitenton:

Arizona Public Service Company ("APS") appreciates the opportunity to submit these additional comments on the "Draft Report to Congress: Energy Policy Act of 2005, Section 1813, Indian Land Rights-of-Way Study" ("Draft Report"), issued by the Department of Energy

("DOE") and Department of Interior ("DOI") on December 21, 2006. APS is pleased that the revised Draft Report more clearly acknowledges the emerging issues relating to renewal of rights-of-way across tribal lands and recognizes that external intervention may be required to break negotiating impasses for such rights-of-way. APS is concerned, however, that DOE and DOI continue to understate the scope of the issues raised by the electric utility industry. With respect to these issues, APS supports the comments being filed by the Edison Electric Institute and will not repeat them here.

APS also was pleased to see that specific sections relating to rights-of-way held by APS across Navajo Nation and Hopi Tribe lands were revised to more accurately reflect information provided by APS in its comments filed on September 3, 2006. Because those revised sections still are incomplete and reach an incorrect conclusion regarding the status of the rights-of-way, APS is providing additional information and documentation for consideration by DOE and DOI.

APS is the largest electric utility in Arizona and serves more than 1 million customers in 11 of the state's 15 counties. The APS service territory is one of the fastest growing in the country and covers federal, state and tribal lands. APS continually evaluates where it needs both new and upgraded transmission facilities to serve its customers needs. Many of the transmission lines constructed and operated by APS cross tribal lands pursuant to federally granted rights-of-way.

Comments on Specific Sections

1. Section 8.4.4.b, Navajo Nation: Arizona Public Service 500-kV Line

The revised Draft Report, in Section 8.4.4.b (page 55) summarizes the positions of the Navajo Nation and APS relating to a right-of-way held by APS for a 500 kV transmission line that crosses Navajo Nation lands. While the revised Draft Report more accurately reflects the status of that right-of-way, APS is concerned that DOE and BIA have concluded, inaccurately in APS's view, that the right-of-way has not been renewed.

As APS indicated in its September 3, 2006 comments, APS owns, operates, and maintains a 500 kV transmission line across Northern Arizona pursuant to an agreement with Southern California Edison ("SCE"). The initial right-of-way was approved by the Navajo Nation Council in 1966 and issued in 1967. As the Navajo Nation Resolution noted, the Nation provided approval for the right-of-way consistent with the Supplemental and Additional Indenture of Lease for the Four Corners Power Plant, entered into between the owners of Four Corners and the Navajo Nation on July 21, 1966 ("Supplemental Lease"). Sections 9 and 12 of the Supplemental Lease provide that the Nation agreed to a 50-year right-of-way

¹ Navajo Nation, Resolution of the Advisory Committee of The Navajo Tribal Council, Approving Right-of-Way for 500kV Transmission Line, June 16, 1966, Navajo Nation Resolution Number ACJN-109-66 (Attachment 1); Bureau of Indian Affairs, Grant of Right-of-Way, APS Map G-23159, Pg. 1, R.E. Kilgore, Assistant Area Director, March 22, 1967 (Attachment 2).

(through 2017) for the APS 500 kV line and establish the charge to be paid by APS for that right-of-way. 2

The Supplemental Lease provided that APS would make a payment after 25 years for the second half of the right-of-way term and specified the amount of the payment to be made. In December 1991, consistent with the terms of the grant of right-of-way and the Supplemental Lease, APS submitted to the BIA for the Navajo Nation the payment for the second half of the right-of-way term.³ As the Draft Report noted, APS submitted a payment similar to the one that it paid for the initial grant,⁴ but indicated its willingness to discuss other considerations for renewal.

As APS's September 3, 2006 comments noted, the Navajo Nation initially rejected the payment submitted by APS and asked the BIA to return the check to APS. APS resubmitted the payment to the BIA in March 1992 and the check was cashed without being returned to APS. Based on these events, the right-of-way was renewed. Although the right-of-way was renewed, APS and Southern California Edison indicated a willingness to discuss further with the Navajo Nation. After initial meetings, the Navajo Nation stated that it would contact the companies when it was prepared to continue those discussions. To the best of APS's knowledge, the Navajo Nation never pursued those discussions.

2. Section 9.6.2, The Hopi Tribe

As APS noted in its September 3, 2006 comments, APS obtained a 25-year right-of-way, with a right of renewal, across the Hopi Reservation in 1966. APS appreciates that DOE and DOI have revised the description of the right-of-way history to reflect information provided by APS in prior comments. In order to ensure a complete and accurate summary of the right-of-way history, APS is providing with these comments copies of relevant documents that support the following comments.

As APS indicated in its September 3, 2006 comments, the right-of-way across Hopi Tribe lands was 97.53 miles in length and 200 feet wide, and the Company paid the Hopi Tribe \$755.00 per mile, for a total payment of \$36,818.33. This payment was approved by the Hopi Tribal Council on July 11, 1966 in: (i) Hopi Tribe Resolution H-18-66 for lands within the Executive Order Boundary of 1882; and (ii) Hopi Tribe Resolution H-19-66, for lands west of

² Copies of Sections 9 and 12 of the Supplemental Lease are included at Attachment 3.

³ The payment was based on \$755 per mile for an easement 200 feet wide as set forth in Section 12 of the Supplemental Lease.

⁴ The original payment amount on January 13, 1967 for the right-of-way was \$109,495.31. The change in compensation between the 1967 and 1992 payment reflected changes in land allotments due to the "Walsh Decision of 1977."

⁵ Official Receipt, Bill for Collection, Bureau of Indian Affairs, March 24, 1992, Receipt Number N0012656 (Attachment 4).

the Executive Order Boundary of 1882.⁶ Both resolutions were approved upon a unanimous vote of 10 to 0.

Both Resolutions contained language that required APS to make a second payment "at the commencement of the second 25 year term in an amount equal to the above payment." The Resolutions also specified that the payment for the second 25 year term for the right-of-way was to be based on \$755 per mile for a right-of-way 200 feet wide. Consistent with those Resolutions, APS submitted renewal payments to the Hopi Tribe through the BIA on November 25, 1991 in the amount of \$21,688.28 for the portion of the right-of-way located within Executive Order Boundary of 1882 (H-18-66: Map Area G-23519). APS made an additional renewal payment of \$1,318.84 to the Hopi Tribe in accordance with the "Walsh Decision of 1977," which increased the allocation of the Hopi interest in the Executive Order Boundary of 1882. The total renewal payment made by APS to the Hopi Tribe for this portion of the right-of-way was \$23,007.12. APS also submitted a renewal payment to the Hopi Tribe through the BIA on March 22, 1992 for the portion of the right-of-way West of Executive Order Boundary of 1882 (H-19-66: Map Area G-23173). Payment was in the amount of \$15,130.05.8

Again, APS and SCE indicated a willingness to discuss the right-of-way renewal with the Hopi Tribe. Following initial meetings initiated by officials from APS and SCE, the Hopi Tribe indicated that it would contact APS and SCE when it was prepared to continue those discussions. To the best of APS's knowledge, the Navajo Nation never pursued those discussions.

If you have any further questions, please feel free to contact me at 602-250-3626 or Jim Looney at 602-371-6298.

Sincerely,

Karilee S. Ramaley

cc: Jim Looney

⁶ See Attachment 5.

⁷ Official Receipt, Bureau of Indian Affairs, January 7, 1992, Bill No. BDH65000079, Reference Number CVH65-92-0079 (Attachment 6).

⁸ See Attachment 4. Payment to the Hopi Tribe was one-half of check number 721138, which was in the amount of \$30, 260.10.

ACJN-109-66

RESOLUTION OF THE ADVISORY COMMITTEE OF THE NAVAJO TRIBAL COUNCIL

Approving Right-of-Way for 500 KV Transmission Line

WHEREAS:

- 1. The Navajo Tribal Council, by Resolution CF-18-66 duly adopted on February 23, 1966, authorized the Advisory Committee to approve a Supplemental Lease between the Tribe and Arizona Public Sérvice Company, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Salt River Project Agricultural Improvement and Power District, and Tucson Gas and Electric Company, and
- 2. By resolution duly adopted by the Advisory Committee on May 29, 1966, the Advisory Committee approved the Supplemental Lease, and
- 3. In Section 9 of the said Lease, the Tribe agrees to consent to the grant by the Secretary of a right-of-way for an extra high voltage transmission system to be owned and built by Arizona Public Service Company, extending from the Four Corners Project in a generally westerly direction across the Reservation and which will interconnect with the transmission system of Southern California Edison Company in Nevada, subject to submission of surveys for Tribal approval as to exact route and location, and
- 4. Plats indicating the proposed course of the said transmission line right-of-way have heretofore been submitted to and approved by the Supervisor of the Land Investigation Department of the Navajo Tribe.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Advisory Committee of the Navajo Tribal Council hereby approves the grant by the Secretary of a transmission line right-of-way along the route indicated on the plats heretofore filed with and approved by the Supervisor of the Land Investigation Department, it being understood that when the field surveys as to exact route or location have been completed, these also will be duly filed with the Supervisor of the Land Investigation Department for his approval as to such surveys.

2. This approval is given subject to all of the conditions stated in Paragraph 9(b) of the Supplemental Lease referred to in Whereas Paragraph 1 above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 16 in favor and 0 opposed, this 16th day of June, 1966.

Vice Chairman
Navajo Tribal Council

MH-76 79 80

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS KEAMS CANYON ARIZONA

THIS MAP COMPOSED OF SHEET OF WHICH THIS IS SHEET I IS HEREBY APPROVED PURSUANT TO THE PROVISIONS OF THE ACT OF FEB 5 1948 (62 STAT 17) AND DEPARTMENTAL REGULATIONS 25 CFR 181 FOR A PERIOD OF 25 YEARS FROM DATE OF APPROVAL. AND IS SUBJECT TO RENEWAL FOR A LIKE TERM UPON COMPLIANCE WITH APPLICABLE REGULATIONS SUBJECT TO ANY PRIOR VALID EXISTING RIGHT OR ADVERSE CLAIM AND SUBJECT TO THE PROVISIONS OF THE HOPI TRIBAL COUNCIL ON RESOLUTION NO. H-18-66

Dec. 28, 1966

(S) CLYDE W. PENSONEAU SUPERINTENDENT

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS WINDOW ROCK ARIZONA

THIS MAP COMPOSED OF SHEET OF WHICH THIS IS SHEET I. IS HEREBY APPROVED PURSUANT TO THE FROVISIONS OF THE ACT OF FEB 5 1948 (62 STAT 17) AND DEPARTMENTAL REGULATIONS 25 CFR 161 FOR A PERIOD OF 25 YEARS FROM DATE OF APPROVAL AND IS SUBJECT TO RENEWAL FOR A LIKE TERM UPON COMPLIANCE WITH APPLICABLE REGULATIONS. SUBJECT TO ANY PRIOR VALID EXISTING RIGHT OR ADVERSE CLAIM AND SUBJECT TO THE APPLICABLE OF THE NAVAJO TRIBAL COUNCIL ON RESOLUTION NO. ACJN-109-66

MAR. 22, 1967 DATE (S)R. E. KILSORE
ASS'T AREA DIRECTOR

Book 636 Page 4 San Juan County, New Mexico 1966 Jul 21 AM 9:41 Attachment 3 S/Johnnie Byrd, County Clerk Re: #3038 Fee \$114.75 SUPPLEMENTAL AND ADDITIONAL INDENTURE OF LEASE 1 2 INCLUDING AMENDMENTS AND SUPPLEMENTS TO ORIGINAL LEASE -3 FOUR CORNERS UNITS 1, 2 AND 3 4 5 BETWEEN 6 7 THE NAVAJO TRIBE OF INDIANS 8 9 10 AND .11 ARIZONA PUBLIC SERVICE COMPANY 12 13 AND INCLUDING 14 15 NEW LEASE -16 FOUR CORNERS UNITS 4 AND 5 17 18 BETWEEN 19 20 THE NAVAJO TRIBE OF INDIANS 21 22 AND 23 24 ARIZONA PUBLIC SERVICE COMPANY 25 EL PASO ELECTRIC COMPANY 26 PUBLIC SERVICE COMPANY OF NEW MEXICO 27 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT 28 AND POWER DISTRICT 29 SOUTHERN CALIFORNIA EDISON COMPANY 30 TUCSON GAS & ELECTRIC COMPANY

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to the Lessees and Arizona, respectively, and to their respective officers, employees, agents, licensees, representatives, contractors, successors and assigns.

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Consent by Arizona to Grants of Rights-of-Way and Easements. Arizona, which holds in its name permits for certain of the existing rights-of-way referred to in Section 4, hereby consents that new or amended easements for said existing rightsof-way pursuant to 25 U.S.C. 323 may be granted by the Secretary or a duly authorized representative thereof to the Lessees as tenants in common with the same respective interests set forth above in Section 2(b) hereof.

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Transmission and Communication Facilities.

(a) The proposed transmission and communication facilities planned in connection with the Four Corners Project include the following:

- (i) An extra high-voltage transmission system to be owned and built by Arizona, extending from the Four Corners Project in a general westerly direction across the Reservation Lands, and which will interconnect with Edison's transmission system in Nevada.
- (ii) An extra high-voltage transmission system to be owned and built by New Mexico, extending from the Four Corners Project in a general easterly direction to the boundary of the Reservation Lands, which will interconnect with New Mexico's system near Albuquerque.
- An extra high-voltage transmission system (iii) which may be owned and built by Salt River Project, extending from the Four Corners

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Project in a generally northerly direction to the boundary of the Reservation Lands, which will interconnect with the United States
Bureau of Reclamation's Colorado River
Storage Project Transmission System at the Shiprock Substation.

- (iv) Microwave communication stations for controlling the operation of the transmission circuits.
- (b) The Tribe hereby agrees to consent to the grant by the Secretary of rights-of-way and easements therefor to the respective Lessees owning the new facilities described in Items (i), (ii), (iii) and (iv) above, subject to submission of surveys for Tribal approval (which approval shall not be unreasonably withheld) as to exact route or location, and to the payment of right-of-way charges and damages as provided in Sections 12 and 13 hereof.
- (c) In addition, it is contemplated by the Lessees that additional transmission lines may ultimately interconnect the Enlarged Four Corners Generating Station with the electric system of other distributors and with the United States Bureau of Reclamation. Rights-of-way and easements for such lines are to be procured in the regular manner at the time when such facilities are to be constructed.

10. Terms.

(a) The New Lease shall extend from the date this
Supplemental Lease becomes effective for a period of 50 years,
with the right and option in the Lessees to extend it for a
period of up to an additional 25-year term by notice to the
Tribe given not less than one year prior to the end of the

amount, in relation to value, in excess of one-half (1/2) of the equivalent rate, in relation to value, of the aggregate property taxes levied or imposed by the State of New Mexico or Arizona or any political subdivision thereof, as the case may be, applicable to such property at that time, and further provided that in the event no property taxes should then be levied or imposed by any such state or political subdivision thereof on such property, then the rate or amount, in relation to value, of taxation of such property by the Tribe may be increased up to the rate or amount, in relation to value, of taxation to which the property would have been subjected as of the last date when property taxes were levied or imposed on such property.

12. Right-of-Way and Easement Charges and Terms.

- (a) For the rights-of-way and easements to be procured from the Secretary for the transmission and communication facilities referred to in Section 9 hereof, the particular Lessee procuring any such right-of-way and easement will pay the charges, if any, fixed by the Area Director.
- (b) For the rights-of-way and easements for the transmission and communication facilities referred to in Section 9 hereof, if the Area Director shall fix or approve such charges, the particular Lessee obtaining the grant of such right-of-way and easement agrees to pay, and the Tribe hereby approves, a standard twenty-five (25) year charge (inclusive of timber damages) of \$250 per mile for a right-of-way and easement 135 feet wide, \$430 per mile for a right-of-way and easement 165 feet wide, \$755 per mile for a right-of-way and easement 200 feet wide, and \$1,250 per mile for a right-of-way and easement 330 feet wide (subject to adjustment for variance in width), and in the case of microwave stations, substations and switching stations and similar

 structures, \$100 per acre for such right-of-way and easement.

- (c) All of the said rights-of-way and easements shall be for a term of fifty (50) years, with payment of the charges above stated to be made as of the time of the initial grant of such right-of-way and easement and as of the commencement of the second twenty-five years of the fifty-year term.
- (d) The grantee of such right-of-way and easement shall have the right to procure an extension after the initial fifty-year term, for up to an additional fifty-year term, in which event it will make like payments each twenty-five years or part thereof during any such extension.
- (e) The payments made by the right-of-way and easement holders are to be in lieu of taxes, assessments, levies or charges of any kind made or imposed by the Tribe, and the Tribe covenants that it will not, directly or indirectly, tax or assess, in any manner whatsoever, the transmission and communication facilities constructed or located on the rights-of-way and easements so procured, or the use or transmission of power or communications over those facilities, or the sales or disposal of power transmitted over said facilities, or otherwise, except for the period and to the extent permitted in Section 11(e) hereof.

13. Damages to Permittees; Protection of Livestock.

(a) The Lessees and any thereof who procure rights-of-way and easements will pay to or for the account of the Tribe for the benefit of its individual Indian permittees the direct and reasonable damages for impairment of their use rights, i.e., the loss of grazing areas, the removal of buildings, hogans or structures of Indian permittees made necessary by construction on the rights-of-way and easements, withdrawal of areas for leases, or damages to crops of Indian permittees,

Attachment 4 OFFICIAL RECEIPT

N 0012656

BILL FOR COLLECTION

Bill N 0012656 Date 3/24/92 Bureau of Indian Affairs-Navajo Area Box 1060 Make Remittance Payable To: (Bureau or Office) Mail Payment To: Gallup. New Mexico PAYER To be issued as official receipt for all cash remittances and for all other remittances when required /Arizona Public Service Company by applicable procedures. P. O. Box 53999 Phoenix, Arizona 85072-3999 Amount of Payment \$. Unit Price DESCRIPTION Quantity Date Amount Cost Per Four Checks, dtd. 3/16/92, Valley Nat'l Bank of . \$144,415,50 Phoenix, Arizona - Payable to BIA......... Payment for Transmission line right-of Way and switching Station= Second 25-year payment Four Corner S.E.S.-El Dorando 500kV Transmission Line (Edison Line) and Moenkopi Switching Station... CK# 8288488 CK# 721137 \$20,369.44 30,260.10 721138 FUEL SUPPLY 72,676.98 22033522 22033523 21,108.98 APR 1 0 1992 \$144,415.50

ARRENT DUE BURGANA

\$ 144,415150

RECEIVED as payment on above bill,

ate 3/24/92 Signature Ruth A Jim

Tile Collection Officer

Attachment 5

RESOLUTION

Mo. H-19-66

HOPI TRIBE

BE IT RESOLVED by the Hopi Tribal Council that the consent of the Hopi Tribe is hereby given to commence construction and to grant a right of way to Arizona Public Service Company for a transmission line across the Indian Reservation created by the Act of June 14, 1934 (48 Stat 960) subject to compliance by that company with the requirements of Sec. 161.7 of the Title 25 of the Code of Federal Regulations and to such other. requirements of said title the Secretary of the Interior or his authorized representative may deem applicable, and hereby consents to a payment of damages of \$755.00 per mile for a right of way 200 feet wide (if fixed according to law and the Code of Federal Regulations in said amount), the funds derived therefrom to be placed in a special account to be designated by the Secretary of the Interior or his authorized representative until the rights of the Navajo and Hopi Tribes in said reservation have been determined, it being understood that the route of said line is to be generally as indicated on the plats submitted by Arizona Public Service Company to the Hopi Tribe, and it being further understood that the above payment is to be for the first 25 years of the term of the permit, with a second payment to be made at the commencement of the second 25 year term in an amount equal to the above payment.

CERTIFICATION

Hopi Tribal Council

ATTEST:

Secretary-Treasurer, Hopi Tribal Council

APPROVED; ,

Clyde W. Pensonesu, Superintendent

Hop! Agency

RESOLUTION HOPI TRIBE

No H-18-66

BE IT RESOLVED by the Hopi Tribal Council that the consent of the Hopi Tribe is hereby given to commence construction and to grant a right of way to ARIZONA PUBLIC SERVICE COMPANY for a transmission line across the joint use area of the Hopi Executive Order Reservation, subject to compliance by that company with the requirements of Sec. 161.7 of the Title 25 of the Code of Federal Regulations and to such other requirements of said title as the Secretary of the Interior or his authorized representative may deem applicable, and hereby consents to a payment of damages of \$755.00 per mile for a right of way 200 feet wide (if fixed according to law and the Code of Federal Regulations in said amount) one-half of said payment to be for the Hopi Tribe, it being understood that the route of said line is to be generally as indicated on the plats submitted by Arizona Public Service Company to the Hopi Tribe, and it being further undesstood that the above payment is to be for the first 25 years of the term of the permit, with a second payment to be made at the commencement of the second 25 year term in an amount equal to the above payment.

CERTIFICATION

I hereby certify that the foregoing Resolution was regularly adopted by the aforegoid Hopi Tribal Council on the 6th day of July, 1966, by a veta of 10 for and opposed and abstaining, the Chairman not voting after full and free discussion on its merits.

DRUTY HEAVING, Chairman Mapi Trival Council

ATTEST:

KEDRIC OUTAH, Secretary

APPROVED:

CLYDE W. PENSONEAU, Superintendent

Bepi Indian Agency

DI-1040 Revised (Aug. 1973)	CFICIAL RECEIPT	Bur No. BDH65000079
Make Remittance Payable To	:. Bureau of Indian Affairs . (Burau or Office)	Dare 1/7/92
Mail Payment To:	P. 0. Box 158, Keams Canyon, Arizona 86034, (Addess)	16034 СУН65-92-0079
	Arizona Public Service Company P. O. Box 53999 Phoenix, Arizona 85072-3999 ATTN: Mr. Jim Dugan, Lead Land Agent	To be issued as official receipt for all cash remittances and for all other remittances when required by applicable procedures. Amount of Payment \$ 23,007.12
Date	DESCRIPTION	Quantity Unit Price Amount
Payment No. H-18 Corners mission Middition (Increas VALIEY NAT'I. FANK Gheck No. 22655714	Payment due the Hopi Tribe (Hopi Resolution No. H-18-66) Second 25-years payment - Four Corners - S. E. S. to Bl Dorado, 500kV Tramsmission Line (12/29/91 - 12/28/2016) Additional monies for Walsh Decision of 1977. (Increase from 50% - 53.04%) AT'L BANK, Phoenix, AZ. (704193)	21.688 28 L.318 84
VALIEY NAT'E BAN Check No. 35803	VALLEY NAT'I BANK, Phoenix, AZ. Check No., 35803886 dtd. 11/20/91	AMOUNT DUE THIS BILL. 8. 23,007 12
RECEIVED	Signature Condition bill. Signature Tokenhime F. Sistemah	INH\$78.79.908.12